

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Robert G. Taub, Vice Chairman; and  
Mark Acton

Market Dominant Product Prices  
Inbound Market Dominant Multi-Service Agreements  
with Foreign Postal Operators 1  
Canada Post Corporation – United States Postal  
Service Bilateral Agreement (MC2010-35)  
Negotiated Service Agreement

Docket No. R2014-3

ORDER APPROVING AN ADDITIONAL INBOUND MARKET DOMINANT  
MULTI-SERVICE AGREEMENT WITH FOREIGN POSTAL OPERATORS 1  
NEGOTIATED SERVICE AGREEMENT  
(WITH CANADA POST CORPORATION)

(Issued December 31, 2013)

I. INTRODUCTION

On November 15, 2013, the Postal Service filed Notice, pursuant to 39 C.F.R. § 3010.40 *et seq.*, of a Type 2 rate adjustment concerning the inbound portion of a bilateral agreement (Agreement) with Canada Post Corporation (Canada Post).<sup>1</sup> The Postal Service seeks to include the Agreement within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (Foreign Postal Operators 1)

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<sup>1</sup> Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, November 15, 2013 (collectively, Notice).

product. For the reasons discussed below, the Commission approves the Postal Service's request.

## II. BACKGROUND

*Product history.* The Commission approved the addition of the Foreign Postal Operators 1 product to the market dominant product list in Order No. 549, and concurrently included two agreements within that product.<sup>2</sup> The Commission has since approved the inclusion of additional agreements within the same product on grounds of functional equivalence, including an existing agreement with Canada Post (2012 Agreement).<sup>3</sup>

*Instant Notice.* The Notice identifies the instant Agreement as a successor to the 2012 Agreement and states that it results in an improvement over default rates established under the Universal Postal Union (UPU) Acts for inbound letter-post items. Notice at 1-4. It also addresses other data and information requirements in the Commission rules. *Id.* at 6-9.

The Notice includes an application for non-public treatment of materials filed under seal (Attachment 1). The Postal Service filed a redacted version of the contract, separately.<sup>4</sup> It also filed an unredacted version of the contract and financial workpapers in a separate, non-public filing.<sup>5</sup>

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<sup>2</sup> See Docket Nos. MC2010-35, R2010-5, and R2010-6, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreements, September 30, 2010 (Order No. 549).

<sup>3</sup> See Docket No. R2012-5, Order Concerning Rate Adjustment for Bilateral Agreement with Canada Post Negotiated Service Agreement, December 27, 2011 (Order No. 1078) and confirmed by Docket No. R2012-5, Order 1611, Order Concerning Amendment To Bilateral Agreement With Canada Post Negotiated Service Agreement, January 7, 2013.

<sup>4</sup> Notice of United States Postal Service of Filing Attachment 2 to Notice of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, November 15, 2013. See *also* United States Postal Service Notice of Filing of Replacement Attachment 2 to Notice of Filing Type 2 Rate Adjustment – Errata, November 18, 2013 (Attachment 2).

<sup>5</sup> Notice of United States Postal Service of Non-Public Filing of Agreement and Financial Workpapers, November 18, 2013. Concurrently, the Postal Service filed a Motion for Late Acceptance of Non-Public Filing of Agreement and Financial Workpapers, November 18, 2013. This motion is granted.

The Postal Service explains that this proceeding involves only those parts of the Agreement that involve delivery of Letter Post in the United States that is tendered by a foreign postal operator, *i.e.*, negotiated rates for inbound market-dominant products. Notice at 6. It further states that the Agreement was submitted in unsigned form because negotiations of terms unrelated to the instant proceeding are ongoing. *Id.*

*Initial Commission action.* On November 19, 2013, the Commission issued an order establishing a docket for consideration of matters raised in the Notice, inviting public comment, and appointing a Public Representative to represent the interests of the general public.<sup>6</sup>

*Scope of Agreement; effective date and duration.* The Agreement includes negotiated pricing for various inbound letter-post products, including International Business Reply Service (IBRS), registered mail, and small packets with delivery confirmation. Notice at 3. Rates pursuant to the Agreement are intended to take effect January 1, 2014. *Id.* at 2-3; Attachment 2 at 7. The Agreement is set to expire on December 31, 2015, unless terminated sooner pursuant to contractual terms or extended by amendment. Attachment 2 at 7-8, 9.

### III. THE POSTAL SERVICE'S POSITION

*Compliance with Commission rules.*<sup>7</sup> 39 U.S.C. § 3622(c)(10)(A)(i) requires that the Agreement improve the net financial position of the Postal Service through reducing Postal Service costs or increasing the overall contribution to its institutional costs. The Postal Service states that it provides required information about expected financial improvements, costs, volumes, and revenues in the sealed financial workpapers. Notice at 4.

39 U.S.C. § 3622(c)(10)(A)(ii) requires that the Agreement enhance the performance of mail preparation, processing, transportation, or other functions. The

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<sup>6</sup> Order No. 1882, Notice and Order Concerning Canada Post Corporation Negotiated Service Agreement, November 19, 2013.

<sup>7</sup> See generally 39 C.F.R. § 3010.42.

Postal Service states that the Agreement includes the following operational and other improvements: (1) the refinement of the use of a web-based inquiry system that will improve customer service response time when inquiries are made for the loss of, damage to, or missing contents from parcels, and (2) the improvement of settlement processes by using electronic data, which will reduce accounting errors and make it possible to settle accounts more quickly. *Id.*

39 U.S.C. § 3622(c)(10)(B) requires that the Agreement not result in unreasonable harm to the marketplace. The Postal Service states, among other things, that Canada Post maintains a generally dominant position in the market for Letter Post originating in its home country, and is therefore the only entity in a position to avail itself of an agreement with the Postal Service of this type and scope. *Id.* at 4-5. The Postal Service asserts that U.S. Private Express Statutes generally prohibit entities other than the Postal Service from carrying inbound international letters commercially after entry at a U.S. port, at least below certain price and weight thresholds. *Id.* at 5. The Postal Service represents that it is unaware of any private entity that would be able to serve the United States market for inbound Letter Post from Canada on the terms and scale contemplated in the Agreement. *Id.* It then concludes that because there is no significant competition in the relevant market when inbound letter-post flows are considered in totality, the Agreement is unlikely to pose competitive harm to the marketplace. *Id.* at 5-6.

39 U.S.C. § 3622(c)(10) requires that agreements be made available on reasonable terms to similarly situated mailers. The Postal Service states that under rules set by the UPU, there are no entities similarly situated to Canada Post that can serve as a designated operator for mail either originating in Canada or destined for the United States. *Id.* at 5. Consequently, the Postal Service states that the market for these services is limited to its parties. *Id.*

*Functional equivalence.* The Postal Service states that the Agreement is functionally equivalent to the agreements previously included within the Foreign Postal Operators 1 product because it is the substantive equivalent to the 2012 Agreement

between Canada Post and the Postal Service as it relates to inbound market dominant services. *Id.* at 8. The Postal Service represents that, as with the 2012 Agreement, the relevant terms of the Agreement fit within the MCS language for the Foreign Postal Operators 1 product, and that the Agreement and the existing agreements therefore conform to a common description. *Id.* at 8-9. The Postal Service also claims that the agreements share a common market, which it describes as foreign postal operators designated by their countries to fulfill the obligations of the UPU Acts. *Id.* at 9. The Postal Service therefore submits that the Agreement is functionally equivalent to the 2012 Agreement and should be added to the market dominant product list within the same product grouping. *Id.*

The Postal Service also maintains that the agreements share cost characteristics and that the financial model used to generate the rates offered under the Agreement is the same as that used to generate the rates offered under the 2012 Agreement. *Id.* It also states that while there are differences between the instant Agreement and the 2012 Agreement, these differences do not detract from the conclusion that the instant Agreement is functionally equivalent to the 2012 Agreement. *Id.*

*Reporting exceptions.* Under 39 C.F.R. § 3010.43, the Postal Service is to provide a detailed plan for providing data or information on actual experience under the Agreement sufficient to allow evaluation of whether the negotiated service agreement operates in compliance with 39 U.S.C. § 3622(c)(10). The Postal Service proposes that no special data collection plan be created for the Agreement because it intends to report information on the Agreement through the Annual Compliance Report (ACR) process, along with any necessary information about mail flows from Canada. *Id.* at 7. The Postal Service cites Order No. 996 as a standing exception to separate service performance reporting (otherwise required under rule 3055.3(a)(3)) for all agreements filed within the Foreign Postal Operators 1 product.<sup>8</sup>

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<sup>8</sup> *Id.*; see also Docket No. R2012-2, Order Concerning an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, November 23, 2011, at 8-9 (Order No. 996).

#### IV. COMMENTS

The Public Representative filed comments on December 3, 2013.<sup>9</sup> No other comments were received. The Public Representative's review of the Agreement and its associated financial workpapers leads her to conclude that the Agreement is likely to improve the net financial position of the Postal Service or otherwise enhance the operational performance of the Postal Service during the contract period. PR Comments at 3. The Public Representative also concludes that the Agreement is functionally equivalent to the 2012 Agreement. *Id.*

*Functional equivalence.* The Public Representative believes that the 2012 Agreement is an appropriate baseline for the instant Agreement. *Id.* She concludes that the differences in the presentation of the financial model and the text of the agreement do not affect a finding of functional equivalence. *Id.* at 3-4.

*Consistency with statutory criteria.* The Public Representative notes that under 39 U.S.C. § 3622(c)(10), the criteria for the Commission's review are whether the Agreement: (1) improves the net financial position of the Postal Service or enhances the performance of operational functions; (2) will not cause unreasonable harm to the marketplace; and (3) will be available on public and reasonable terms to similarly situated mailers. *Id.* at 4. With respect to the first criterion, the Public Representative states that based on the negotiated rates, the final model indicates that the Agreement is expected to improve the financial position of the Postal Service. *Id.* With respect to the second and third criteria, the Public Representative states that the Postal Service makes reasonable arguments that the Agreement will not cause unreasonable harm to the marketplace and will be available on public and reasonable terms to similarly situated mailers. *Id.*

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<sup>9</sup> Public Representative Comments on Postal Service Notice Concerning Rate Adjustment for Canada Post Negotiated Service Agreement, December 3, 2013 (PR Comments). Concurrently, the Public Representative filed a Motion of Public Representative for Late Acceptance of Comments, December 3, 2013. This motion is granted.

However, the Public Representative identifies two concerns with the Postal Service's filing. First, the Public Representative observes that the Agreement does not include negotiated rates for IBRS. *Id.* She notes that the Postal Service has not yet negotiated inbound IBRS rates with Canada and that the Postal Service plans to file the IBRS rates with the Commission once negotiations conclude with Canada. *Id.*

Second, the Public Representative raises concerns with the Postal Service's use of 2014 and 2015 volume estimates. *Id.* at 4-5. She believes that the Postal Service should not use volume estimates, and if it does, she states that the Postal Service should explain the source and the reason for the adjustments. *Id.* at 5. She concludes, however, that the volume adjustments made in the financial workpapers are reasonable and do not change her conclusion that the Agreement appears to improve the net financial position of the Postal Service. *Id.*

## V. COMMISSION ANALYSIS

The Commission has reviewed the Postal Service's filing and comments filed by the Public Representative.

*Statutory responsibilities.* Under the statutory and regulatory provisions of 39 U.S.C. § 3622(c)(10) and 39 C.F.R. §§ 3010.40(a) and (b), the Agreement must either improve the net financial position of the Postal Service or enhance the performance of various operational functions and must not cause unreasonable harm to the marketplace. The Agreement also must be available on public and reasonable terms to similarly situated mailers. 39 C.F.R. § 3010.40(c).

The Commission finds, consistent with 39 U.S.C. § 3622(c)(10)(A)(i), that the negotiated rates in the Agreement will improve the net financial position of the Postal Service, as they will generate higher revenues, contribution, and cost coverage than otherwise applicable UPU default rates. It also finds, consistent with 39 U.S.C. § 3622(c)(10)(A)(ii), that the Agreement includes several provisions intended to enhance performance. With respect to 39 U.S.C. § 3622(c)(10)(B), the Commission finds that the Agreement will not cause unreasonable harm to the marketplace, given

the contracting parties' status as designated postal operators and the prohibition against entities other than the Postal Service from carrying inbound international letters commercially (at least those below certain price and weight thresholds) after entry at a U.S. port.

*Functional equivalence.* The Commission finds that the differences the Postal Service identifies between the 2012 Agreement and the instant Agreement do not foreclose a finding of functional equivalence. The Commission therefore concludes that the Agreement may be included in the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product, and revises the Mail Classification Schedule (MCS) as shown in the attachment following the Secretary's signature.

*Public Representative concerns.* The Public Representative raises two concerns with the filing. With respect to her concerns with the lack of rates for IBRS, the Commission notes that the Postal Service recently filed Calendar Year (CY) 2014 and CY 2015 rates for outbound IBRS.<sup>10</sup> However, the Commission's review of Foreign Postal Operators 1 agreements does not include outbound IBRS. The Signed Canada Post Agreement notes that inbound IBRS with Canada Post has not yet been launched. *Id.* at 53. Accordingly, rates for inbound market dominant IBRS service are not currently before the Commission.

With respect to the Public Representative's concerns with the Postal Service's volume estimates, the Commission concludes that in future filings, the Postal Service's supporting workpapers should clearly explain the basis of all volume projections. Nevertheless, the Commission concurs with the Public Representative that the current volume projections appear reasonable.

*Reporting exceptions.* The Postal Service proposes that no special data collection plan be created for the Agreement, requesting, consistent with the exception granted in Order No. 1078, that it be permitted to report information related to the

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<sup>10</sup> Notice of United States Postal Service of Non-Public Filing of Signed Agreement, December 17, 2013 (Signed Canada Post Agreement), at 16. These rates represent payments that the Postal Service must provide to Canada Post for the delivery of IBRS in Canada.



Agreement in its ACR. Notice at 7. The Commission grants an exception from rule 3010.43.

The Postal Service invokes Order No. 996, which established a standing exception to the service performance reporting under 39 C.F.R. § 3055 (a)(3) for Foreign Postal Operators 1 agreements, as support for an exception for this Agreement. *Id.* Order No. 996's standing exemption continues to apply.

*Follow-up submissions.* The Postal Service shall promptly notify the Commission if the Agreement terminates earlier than intended or is extended by amendment. In addition, within 30 days of the Agreement's expiration date, or early termination, the Postal Service shall file costs, volumes, and revenues associated with the Agreement.

The Commission notes that UPU default rates (for use in the cost coverage test) have been published for CY 2014, but not for CY 2015, which constitutes the second year of the Agreement's term. Once the UPU default rates for CY 2015 become available, the Postal Service shall promptly supplement its filing in this case to confirm that cost coverage under the negotiated rates for CY 2015 exceeds cost coverage under UPU default rates.

## VI. ORDERING PARAGRAPHS

*It is ordered:*

1. The Agreement filed in this docket is included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-35, R2010-5, and R2010-6) product.
2. The Commission approves the Type 2 rate adjustment requested in the Postal Service's November 15, 2013 Notice filed in this proceeding.

3. If the Agreement terminates early, the Postal Service shall notify the Commission within 30 days of the termination date. The Postal Service shall also promptly notify the Commission if the Agreement is extended.
4. Within 30 days of expiration, or upon early termination of the Agreement, the Postal Service shall file cost, volume, and revenue data associated with the Agreement.
5. The Postal Service's request for an exception to the data reporting requirements in Commission rule 3010.43 is granted.
6. The standing exception to service performance reporting requirements established in Order No. 996 continues to apply.

By the Commission.

Shoshana M. Grove  
Secretary

## CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

## Part A—Market Dominant Products

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### 1602.3 Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators

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#### 1602.3.5 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

- Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1

*Baseline Reference*

Docket Nos. MC2010-35, R2010-5, and R2010-6

PRC Order No. 549, September 30, 2010

*Included Agreements*

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Canada Post 2012-Agreement, ~~R2010-2~~R2014-3, expires December 31, ~~2013~~2015

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